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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,487	02/18/2004	James G. Archuleta JR.	0068.03	3120

25712 7590 08/30/2004

USDA-ARS-OFFICE OF TECHNOLOGY TRANSFER  
NATIONAL CTR FOR AGRICULTURAL UTILIZATION RESEARCH  
1815 N. UNIVERSITY STREET  
PEORIA, IL 61604

EXAMINER

NOVOSAD, CHRISTOPHER J

ART UNIT PAPER NUMBER

3671

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/781,487	<b>Applicant(s)</b> ARCHULETA ET AL.	
	<b>Examiner</b> Christopher J. Novosad	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 10-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 02/18/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Invention I, claims 1-9 in the reply filed on July 22, 2004 is acknowledged. Accordingly, claims 10-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 13, the recitation "near" is indefinite since "near" is a relative term.

In claim 8, line 2, the recitation "a third plane" is indefinite since no first and second plane have been previously set forth. To correct this, it appears that claim 8 should depend from claim 6 rather than from claim 7.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Fryrear.

With respect to claim 1, Fryrear shows an earth-working bucket 12 adapted for conversion to a combination excavator and subsoiler implement and further adapted for pivotal attachment to an excavating machine 10, comprising:

(a) opposing side walls 28 joined by a generally concave pan 26,32, said pan 26,32 having a leading edge (unnumbered) at the bottom (unnumbered) of the bucket 12 and a trailing edge (unnumbered) at the top (unnumbered) of the bucket 12, and each of said side walls 28 having an edge (unnumbered) in proximity to the leading pan edge (unnumbered) and trailing pan edge (unnumbered), wherein together the leading pan edge (unnumbered), trailing pan edge (unnumbered) and the side wall edges (unnumbered) define a bucket opening 20;

(b) pivotal attachment means (unnumbered) near the top (unnumbered) of the bucket and;

(c) a shank socket 50 incorporated into each of the opposing side walls 28 and having an open end 44, the socket 50 adapted to receive and secure a proximal end (unnumbered) of a subsoiling shank 38 having a substantially pointed, earth-working distal end 40, wherein the open end 44 of the socket 50 and the bucket opening 20 are oriented in generally opposite directions from one another.

As to claim 2, the shank socket 50 is adapted to receive at least one removable fastener 58 for securing the subsoiling shank 38 within the socket 50.

Regarding claim 5, Fryrear shows a subsoiling shank 38 secured within the shank socket 50.

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With respect to claim 6, the subsoiling shank 38 lies substantially in a first plane (unnumbered) and comprises at least one wing 40 lying in a second plane (unnumbered) that is substantially perpendicular to the first plane (unnumbered).

As to claim 7, the subsoiling shank 38 has a curvilinear profile.

Regarding claim 8, the bottom (unnumbered) of the bucket 12 lies in a third plane (unnumbered) and the distal end 40 of the subsoiling shank 38 extends from the shank socket 50 to beyond the third plane (unnumbered).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fryrear in view of Clark.

Fryrear shows the bucket as noted.

The claims distinguish over Fryrear in requiring (1) each of the opposing side walls to comprise an extension that is exterior to the pan and is tapered toward the open end of the socket (as required in claim 3); (2) the extension on each of the side walls to comprise a coulter blade (as required in claim 4); and (3) each of the opposing side walls to comprise an extension that is exterior to the pan and is tapered toward the open end of the socket, and the extension to

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comprise a coulter blade disposed between the bottom of the bucket and the at least one wing (as required in claim 9).

Clark shows a bucket 30 wherein (1) each of the opposing side walls 43 comprise an extension 50,51 that is exterior to the pan 44 and would be tapered (note edge above and between each set of bolts 53) toward the open end of the socket 50 when placed on the sidewalls 28 of Fryrear (as required in claim 3); (2) the extension 50,51 on each of the side walls 43 comprising a coulter blade 50,51 (as required in claim 4); and (3) each of the opposing side walls 43 comprising an extension 50,51 that is exterior to the pan 44 and would be tapered (note edge above and between each set of bolts 52) toward the open end (unnumbered) of the socket when placed on the sidewalls 28 of Fryrear '624, and the extension 50,51 comprising a coulter blade 50,51 that would be disposed between the bottom (unnumbered) of the bucket 12 and the at least one wing 40 when placed on sidewalls 28 of Fryrear '624 (as required in claim 9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed the extension/coulter blade 50 of Clark on the sidewalls 28 of Fryrear for additional cultivation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 703-308-2246. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad  
Primary Examiner  
Art Unit 3671

August 24, 2004